IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LUIS A. CAMPOS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 99 C 2693
	)	
CRAIG A. SETHNESS and	)	Magistrate Judge Schenkier
CREDIT MANAGERS, INC.,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM OPINION AND ORDER

This is an action brought under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*, in connection with the form of a letter sent to plaintiff (Complaint, Ex. A) and the information provided on the face of the envelope that contained the letter (*id.*, Ex B). In the complaint, plaintiff alleged a class consisting of all natural persons to whom defendant Credit Managers, Inc. ("CMI") sent an envelope in the form of Exhibit B to the complaint to an Illinois address on or after November 1, 1998, in connection with the attempted collection of medical bills (Complaint, ¶ 24). On July 9, 1999, defendants filed a motion to dismiss the complaint [doc. # 10-1], which is now fully briefed and awaiting decision. No class certification motion has been filed.[1] Two significant events have occurred since the filing of the complaint that have significantly changed the landscape of the case. On November 11, 1999, CMI informed the Court of the death of Mr. Sethness [doc. # 16-1], one of the two named defendants in the

1 Pursuant to 28 U.S.C. § 636(c), the parties have voluntarily consented to have a United States Magistrate Judge conduct all proceedings in this case, including the entry of final judgment.

case. Thereafter, on January 26, 2000, the sole remaining defendant, CMI, filed a petition for bankruptcy under Chapter 7 of the Bankruptcy Code, and notified the Court of that fact on March 13, 2000 [doc. # 23-1]. In light of these developments, plaintiff (with CMI's agreement) now has filed a motion to voluntarily dismiss the complaint [doc. # 24-1] -- with prejudice as to the claims of Mr. Campos, and without prejudice as to the claims of any putative members who would be in the requested class were it to be certified. Plaintiff further requests he be allowed to withdraw the class allegations, and that he be excused from sending notice of the dismissal to the class.

Since no answer or motion for summary judgment has been filed, plaintiff's motion for voluntary dismissal is governed by Fed. R. Civ. P. 41(a)(1) and, ordinarily, would not require an order of the Court. However, Rule 41(a)(1) specifically provides that a plaintiff's right to voluntarily dismiss a complaint is "[s]ubject to the provisions of Rule 23(e)," which provides that a class action "shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs." Fed. R. Civ. P. 23(e).

In *Glidden v. Chromalloy American Corp.*, 808 F.2d 621, 625-27 (7th Cir. 1986), the court decided the threshold question of whether Rule 23(e) applies to a complaint containing class allegations, but in which a class has not yet been certified. While noting that "[a]s a linguistic matter, Rule 23(e) could be read either way," and that a case is not a "class action" until after certification for purposes of awarding class relief, the Seventh Circuit nonetheless held that Rule 23(e) applies and requires court approval for settlement or dismissal of a class action complaint even prior to a decision on class certification. *See also Baker v. America's Mortgage Servicing, Inc.*, 58 F.3d 321, 324 (7th Cir. 1995).

However, the *Glidden* court went on to explain that to require court approval under Rule 23(e) for a pre-certification dismissal "is not necessarily to say that no putative class action may be dismissed without notice to every potential member of the class." 808 F.2d at 627. Unlike the situation where a class has been certified, prior to certification "any dismissal would not have a res judicata effect as to the absent putative class members." *Hickerson v. Velsicol Chem. Corp.*, 121 F.R.D. 67, 68 (N.D. Ill. 1988) (holding that Rule 23(e) notice was required for an agreed dismissal *after* a class had been certified, but distinguishing that situation from a pre-certification dismissal). Moreover, the Seventh Circuit in *Glidden* observed that "[w]hen notice would be a fruitless yet costly gesture, Rule 23(e) -- read in light of Rule 1 -- does not compel the parties to incur pointless expense." 808 F.2d at 627. Thus, reaffirming its earlier decision in *Simer v. Rios*, 661 F.2d 655, 666 (7th Cir. 1981), the Seventh Circuit held that "Rule 23(e) does not invariably require notice when a case is settled prior to certification." *Id*.

In so holding, the *Glidden* court specifically pointed out that notice "may be dispensed with more freely when the claims are being dismissed" than when being settled. 808 F.2d at 628. In the former situation, no putative class-member claims are being compromised, whereas in the latter situation, due process concerns would be implicated by resolving putative class-member claims without notice. *Id.*

Applying the *Glidden* analysis to this case, the Court finds that notice of the dismissal is not required. The changed circumstances of this case since it was filed (the death of one defendant, and a bankruptcy petition seeking liquidation by the other) strongly suggest that this lawsuit, whatever its merit, is no longer economically prudent to pursue. The willingness of Mr. Campos to have his dismissal entered with prejudice underscores that point. Nonetheless, the terms that plaintiff proposes, and that the Court adopts, would not affect the rights of any persons other than Mr. Campos aggrieved by the type of mailing

at issue here from pursuing an action against CMI if they so wish -- although, as a practical matter, they might have to do so by way of a claim in the bankruptcy court, in light of the automatic stay that protects a petitioner in bankruptcy from the commencement or continuation of judicial proceedings "to recover a claim against the debtor that arose before the commencement of the [bankruptcy case]." 11 U.S.C. § 362(a)(1).

This is not a situation in which the named plaintiff seeks to pursue his case while abandoning the class he set out to champion, thus depriving the putative class members of the benefits if he were to prevail. *See Glidden*, 808 F.2d at 627. Rather, the named plaintiff is irrevocably dropping his claims as well. Nor is this a case where there is any realistic possibility that putative class members have relied on the pendency of the class action, which tolls the statute of limitations as to their claims against CMI, *see Glidden*, 808 F.2d at 627, and thus would suffer prejudice were this case to be dismissed without notice to them. There has been no order certifying a class and no motion for class certification, and plaintiff's counsel has represented that "no notice of pendency [of this action] has ever been sent to the putative class" (Pl. Mot., ¶ 9). Moreover, a computerized search by the Court has revealed no news stories about this lawsuit since it was filed in April 1999, a factor that further underscores the absence of any likelihood that putative class members have relied on this lawsuit and the lack of necessity of notice. *See Larkin Gen. Hosp., Ltd. v. AT&T Co.*, 93 F.R.D. 497, 501 (E.D. Pa. 1982) (observing that the danger of reliance by putative class members as a result of learning of an action through media coverage or some other secondary source is generally limited to lawsuits of sufficient general public interest to warrant such coverage).

Accordingly, based on the foregoing discussion, plaintiff's agreed motion to dismiss [doc. # 24-1] is granted as follows:

1. Plaintiff's individual claims are dismissed with prejudice.

2. All claims asserted by plaintiff on behalf of the putative class (which was never certified) are dismissed without prejudice to the right of any putative class member to initiate an action, either individually or on behalf of a class. In light of the dismissal without prejudice of the class claims, the Court will deny plaintiff's request to withdraw the class allegations set forth in the complaint. Although withdrawal of class allegations can be an appropriate request in connection with a motion under Rule 23(e), *see Glidden*, 808 F.2d at 628, the Court believes it is unnecessary here in light of the dismissal of the class allegations without prejudice.

3. In light of the dismissals, defendant's Motion to Dismiss [#10-1] is denied as moot.

4. All named parties are excused from sending notice to putative class members.

5. The dismissals are entered without any award of costs; each side shall bear its own costs.

ENTER:

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SIDNEY I. SCHENKIER
United States Magistrate Judge

Dated: April 11, 2000